

REMARKS***Summary of the Amendment***

Upon entry of the above amendment, claim 21 will have been amended. Accordingly, claims 21-126 will be pending with claims 23-28, 33, 35-45, 47-49, 51-68, 70-82, 84-86, 88, 90-106, 108, 117 and 127 being withdrawn by the Examiner on the basis of an election of species.

Summary of the Official Action

In the instant Office Action, the Examiner reiterated the previous restriction requirement and made the restriction requirement final. The Examiner also rejected claims 21, 25, 27, 46, 50, 83, 87, 107 and 122 on the basis of provisional obviousness-type double patenting over a copending application. Additionally, the Examiner rejected claims 21 and 22 as being indefinite. Claims 21, 22, 46, 50, 83, 107, 122 and 126 were rejected over the art of record. Finally, the Examiner indicated that claims 110-116, 118-121 and 123-125 were allowed. Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Provisional Obviousness-type Double Patenting Rejection

The Examiner rejected claims 21, 22, 46, 50, 83, 107, 122 and 126 on the basis of a provisional obviousness-type double patenting rejection over claims 52-54 of copending US patent application No. 10/463,535 alone.

In support of the instant rejection, the Examiner asserts that both claim sets are

"claiming common subject matter". Applicant respectfully disagrees with the Examiner's assertions.

The above-noted claims of the instant application recite a cap and a trigger claim, as well as, that the cover or cap has a portion which slides over an external surface of the housing. On the other hand, claims 52-54 of the copending application recite, among other things, a removably disposed cap and a trigger arranged on the side of the housing, and do not recite that the cover or cap has a portion which slides over an external surface of the housing.

Thus, claims 52-54 of the copending application recite features which are not recited in the noted claims of the instant application, and vice versa. As such, the Examiner cannot properly assert that both claim sets recite all the same structural features. Furthermore, since the Examiner has not set forth any prior art demonstrating that these differences are in fact obvious, Applicant submits that this basis of rejection is improper.

Applicant requests that the Examiner reconsider and withdraw the provisional rejection of the above-noted claim on the obviousness-type double patenting.

The Section 112, 2nd Paragraph, Rejection is moot

Claims 21 and 22 were rejected under 35 U.S.C. § 112, 2nd paragraph, as being indefinite. Specifically, the Examiner asserted that claims 21 and 22 recite a feature which lack proper antecedent basis.

By this Amendment, Applicant has amended claim 21 so as to provide proper antecedent basis for the feature asserted to be lacking in proper antecedent basis.

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of these claims.

Traversal of Rejection Under 35 U.S.C. § 102

Applicant traverses the rejection of claims 21, 22, 46, 50, 83, 107, 122 and 126 under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 5,857,983 to DOUGLAS et al.

The Examiner asserted that this document discloses all the features recited in these claims including the recited cap/cover 70. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, a cap or cover having a portion which slides over an external surface of the housing, as recited in independent claims 21, 46, 50, 83, 87, 107, 122 and 126.

Applicant acknowledges that DOUGLAS discloses a lancet device which uses what the Examiner has characterized as a cap/cover 70. However, it is apparent from a fair reading of the figures that DOUGLAS does not disclose, or even suggest, that the so-called cap 64 has a portion which slides over an external surface of the housing. To the contrary, the figures clearly shows the so-called cap/cover 70 arranged within the housing. Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of DOUGLAS.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single

document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because this document fails to disclose at least the above mentioned features as recited in independent claims 21, 46, 50, 83, 87, 107, 122 and 126, Applicant submits that this document does not disclose all the claimed features recited in at least independent claims 21, 46, 50, 83, 87, 107, 122 and 126.

Furthermore, Applicant submits that dependent claim 22 is allowable at least for the reason that these claims depend from an allowable base claim and because this claim recites additional features that further define the present invention. In particular, Applicant submits that no proper reading of DOUGLAS discloses or suggests, in combination: that the at least one stop comprises a guide collar on the lower housing as recited in claim 2.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(e).

Acknowledgment of Allowable Subject Matter

Applicant acknowledges and appreciates the Examiner's indication that claims 110-116, 118-121 and 123-125 are allowed. However, Applicant submits that all pending non-withdrawn claims should be indicated to be allowed.

CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the

Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Respectfully submitted,
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